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*Attorney for Defendant*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_  
TAMARA WAREKA,

Plaintiff,

Civil Action No. 2:21-cv-06227-SRC-CLW

-against-

**ANSWER AND JURY DEMAND**

DIMITRY RABKIN, M.D., P.C. dba  
ESTHETICA MD and DOES 1 through  
10 inclusive

Defendant  
\_\_\_\_\_

Defendant Dimitry Rabkin, M.D., P.C. dba Esthetica MD ("Rabkin") by and through its undersigned attorneys, as and for its Answer to the Complaint herein, alleges as follows:

1. Denies each and every allegation set forth in Paragraph 1 against Defendant and denies knowledge or information sufficient to form a belief as to the truth of the allegations therein concerning any other party.

**JURISDICTION AND VENUE**

2. Paragraph 2 of the Complaint states a legal conclusion, for which no response is required.

3. Paragraph 3 of the Complaint states a legal conclusion, for which no response is required.

4. Denies each and every allegation set forth in Paragraph 4 of the Complaint.

5. Denies each and every allegation set forth in Paragraph 5 of the Complaint.

#### **PARTIES**

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Complaint.

7. Denies each and every allegation set forth in Paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Complaint.

#### **FACTUAL ALLEGATIONS**

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Complaint.

14. Denies each and every allegation set forth in Paragraph 14 of the Complaint.

15. Denies each and every allegation set forth in Paragraph 15 of the Complaint.

16. Denies each and every allegation set forth in Paragraph 16 of the Complaint.
17. Denies each and every allegation set forth in Paragraph 17 of the Complaint.
18. Denies each and every allegation set forth in Paragraph 18 of the Complaint.
19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Complaint.
20. Denies each and every allegation set forth against Defendant in Paragraph 20 of the Complaint and denies knowledge or information sufficient to form a belief as to the truth of any allegations therein concerning any other party.
21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Complaint.
23. Denies each and every allegation set forth in Paragraph 23 of the Complaint.
24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Complaint.
25. Denies each and every allegation set forth in Paragraph 25 of the Complaint.
26. Denies each and every allegation set forth against Defendant in Paragraph 26 of the Complaint.
27. Denies each and every allegation set forth against Defendant in Paragraph 27 of the Complaint and denies knowledge or information sufficient to form a belief as to the truth of any allegations therein concerning any other party.



28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Complaint.

29. Denies each and every allegation set forth in Paragraph 29 of the Complaint.

30. Denies each and every allegation set forth in Paragraph 30 of the Complaint.

31. Denies each and every allegation set forth in Paragraph 31 of the Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 of the Complaint.

**FIRST CAUSE OF ACTION  
COPYRIGHT INFRINGEMENT  
17 U.S.C. 101 et seq**

33. In response to Paragraph 33, Defendant repeats and reiterates its responses to Paragraphs 1 through 32 as if fully set forth herein.

34. Denies each and every allegation set forth in Paragraph 34 of the Complaint.

35. Denies each and every allegation set forth in Paragraph 35 of the Complaint.

36. Denies each and every allegation set forth in Paragraph 36 of the Complaint.

37. Denies each and every allegation set forth in Paragraph 37 of the Complaint.

38. Denies each and every allegation set forth in Paragraph 38 of the Complaint.

**PRAYER FOR RELIEF**

Denies that Plaintiff is entitled to any of the relief sought in the Prayer for Relief.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Cause of Action)**

1. Plaintiff fails to set forth a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE  
(Failure to Join a Required Party)

2. Plaintiff has failed to join a necessary and indispensable party.

THIRD AFFIRMATIVE DEFENSE  
(Incorrect Party Named as Defendant)

3. Plaintiff has named the incorrect party as Defendant in this action.

FOURTH AFFIRMATIVE DEFENSE  
(Laches)

4. Plaintiff's claims are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE  
(Fair Use)

5. Use of the photograph in question is protected under the doctrine of fair use.

SIXTH AFFIRMATIVE DEFENSE  
(Absence of Copyright Protection)

6. Plaintiff has not established any copyright in the images that are subject of the Complaint.

SEVENTH AFFIRMATIVE DEFENSE  
(Justification/Good Faith)

7. All actions alleged to have been taken by Defendant were justified and/or taken in good faith and were not willful, purposeful or intentional.

EIGHTH AFFIRMATIVE DEFENSE  
(Statute of Limitations)

8. Plaintiff's claims are barred by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE  
(Implied License)

9. There was an implied license to use each of the photographs referenced in the Complaint.

TENTH AFFIRMATIVE DEFENSE  
(License to Use Photographs)

10. Upon information and belief, a license for publication of the subject photographs was obtained or not required.

ELEVENTH AFFIRMATIVE DEFENSE  
(De Minimis Use)

11. Any use of the photographs referenced by Plaintiff was de minimis.

**DEMAND FOR JURY TRIAL**

Defendant hereby demands a trial by the jury on the claims herein and all issues and claims so triable in this action.

WHEREFORE, Defendant respectfully requests that the Court enter judgment:

- (i) dismissing Plaintiff's Complaint in its entirety;
- (ii) awarding Defendant its reasonable costs and attorneys' fees; and
- (iii) awarding Defendant such other and further relief as the Court deems just and proper.

Dated: April 21, 2021



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